

MAR 17 1994

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
 OFFICE OF THE SECRETARY

In re Application of

**TELEPHONE AND DATA SYSTEMS,
 INC.**

For facilities in the Domestic Public
 Cellular Telecommunications Radio Service
 on Frequency Block B, in Market 715,
 Wisconsin 8 (Vernon), Rural Service Area

) CC Docket No. 94-11
)
)
) File No. 10209-CL-P-715-B-88
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)

To: Honorable Joseph P. Gonzalez
 Administrative Law Judge

**COMMON CARRIER BUREAU'S COMMENTS IN SUPPORT OF
 PORTLAND CELLULAR PARTNERSHIP'S PETITION TO INTERVENE**

On March 8, 1994, Portland Cellular Partnership (Port Cell) filed a Petition to Intervene in the captioned proceeding pursuant to Section 1.223(b) of the Commission's Rules. 47 C.F.R. § 1.223(b). Port Cell is a party to a proceeding before the Commission involving the cellular authorization for the Portland, Maine, New England County Metropolitan Area. Port Cell has raised the La Star Cellular Telephone Company¹ Footnote Three character questions at issue in the instant proceeding against Telephone and Data Systems, Inc. (TDS) in the Portland proceeding. The Common Carrier Bureau supports Port Cell's Petition to Intervene.

1. Port Cell is comprised of three applicants for the cellular authorization in the Portland market constituting a partial settlement in the market. On June 4, 1993, the Commission granted the application of Northeast Cellular Telephone Company, L.P. (Northeast).² United States

¹ La Star Cellular Telephone Company, 6 FCC Rcd 6860 (I.D. 1991), aff'd, 7 FCC Rcd 3762 (1992), appeal pending sub nom. Telephone and Data Systems, Inc. v. FCC, Case Nos. 92-1291, 92-1294 (D.C. Cir.).

² See Portland Cellular Partnership, 8 FCC Rcd 4146 (1993).

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Cellular Corporation (USCC), a TDS subsidiary, is a 48.51 percent limited partner in Northeast and owns 49 percent of Maine State Cellular Telephone Company, the sole general partner in Northeast. Port Cell has raised the unresolved character issues of La Star in petitions against Northeast in the Portland proceeding.

2. In the Commission's Order which granted Northeast's cellular application, the Commission rejected claims by Port Cell that USCC was the real party in interest behind Northeast's application. The Commission did not address Port Cell's claims regarding the questions raised in footnote three of the La Star decision. Although, Port Cell has filed a timely petition for further reconsideration with the Commission to this regard. That petition remains pending.

3. Paragraph 38 of the Hearing Designation Order states that any "other parties which have pending petitions alleging [the La Star] character issues may file a petition to intervene in this proceeding . . . "³ Because Port Cell does have a pending petition which alleges the Footnote Three character issues against USCC, the Bureau supports Port Cell's intervention.

4. The Bureau acknowledges that Port Cell is in a different position than other parties with pending petitions against either USCC or TDS in that a Commission decision has been reached regarding Port Cell's application. In all of the other proceedings in which parties have raised the La Star Footnote Three character issues against USCC or TDS, no action has been taken on the application. The Commission, however, has decided that Port Cell's application should be dismissed and that Northeast's application should be granted. Port Cell filed a timely petition for further reconsideration of this decision. Therefore, the decision is not final and the matter is nonetheless still pending before the Commission.

³ See Telephone and Data Systems, Inc., FCC No. 94-29, at ¶ 38 (released Feb. 1, 1994).

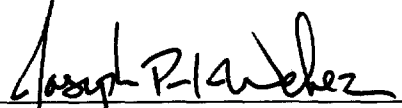
5. While supporting Port Cell's petition, the Bureau, however, believes it is important to note that Port Cell's comment that it "is knowledgeable concerning USCC's pattern of activities in circumstances similar to those in La Star" should be disregarded. Port Cell's claim is apparently that it has knowledge of the manner in which USCC controls or attempts to control cellular applications. The instant proceeding is not to make a determination of USCC control in any market. The Commission has already made determinations regarding USCC control in both New Orleans (the La Star market) and in Portland. The instant proceeding is only to determine whether USCC misrepresented facts, lacked candor, or attempted to mislead the Commission in the La Star proceeding. Accordingly, the basis for allowing Port Cell to intervene should not be that it will assist in the determination that USCC's practices result in USCC obtaining unauthorized control of cellular applications. However, because Port Cell has raised Footnote Three character issues against USCC in a pending petition, the Bureau supports Port Cell's intervention in the instant proceeding to allow Port Cell to be heard in the introduction of evidence concerning USCC's conduct in the La Star proceeding only.

Respectfully submitted,

A. Richard Metzger, Jr.
Acting Chief, Common Carrier Bureau

March 17, 1994

By:


Joseph Paul Weber
Trial Attorney

CERTIFICATE OF SERVICE

I, Elizabeth Williams, do hereby certify that on March 17, 1994, copies of the foregoing Comments in Support of Portland Cellular Partnership's Petition to Intervene were served by first-class mail, U.S. Government frank, except as otherwise noted, on the following parties:

DELIVERED BY HAND

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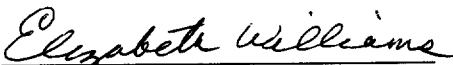
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